Supreme Court, U.S.
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IN THE SUPREME COURT
OF THE UNITED STATES

No. 93-1138

JOHNNY H. WATERS, ET AL.

Petitioners,

v.

DR. H. M. REEVES, ET AL.

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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STATEMENT OF THE CASE

This wrongful death action was originally instituted in the Circuit Court of Jefferson County, Alabama, under the Alabama Wrongful Death Statute. Code of Alabama, 1975, Section 6-5-410. This defendant was joined with other defendants who were variously described as entities who took part at the University of Alabama in the care of the deceased. This defendant is a medical doctor who practices in Selma, Alabama. His treatment of the plaintiff occurred well before the death. The Circuit Court in Jefferson County dismissed all of the defendants who were residents of Jefferson County under the doctrine of Sovereign Immunity. The case was then transferred back to the Circuit Court of Dallas County, Alabama and was pending against this defendant and the Selma Medical Center.

This defendant filed a motion for summary judgment based on the fact that a duly appointed personal representative had not brought this wrongful death action as required by the law of Alabama. The only issue before the trial judge was whether that requirement of the Alabama Wrongful Death Act had been complied with. The trial court held that it had not and granted summary judgment in favor of all defendants. Plaintiffs took an appeal to the Supreme Court of

Alabama which affirmed the judgment of the trial court. This ruling by the Alabama Supreme Court was consistent with numerous Alabama decisions requiring that a duly appointed personal representative bring a wrongful death action within two years of the death.

No contention was raised before either the trial court or the Alabama Supreme Court that the requirement that a duly appointed personal representative of the estate must bring a wrongful death action within two years of the death violated the United States Constitution, treaties or other laws. The allegations before the trial court and before the Alabama Supreme Court related purely to matters of Alabama rules of procedure concerning how to properly raise this issue and further whether, in fact, this plaintiff had to meet the requirement that a duly appointed personal representative bring the wrongful death action within two years.

ARGUMENT

I. THE PETITION FOR WRIT OF CERTIORARI IS DUE TO BE DENIED BECAUSE NO FEDERAL QUESTION IS PRESENTED.

This case involves very simply the interpretation of the Alabama Wrongful Death Statute and the manner in which it is properly presented to a trial court. There is no contention against this defendant that the requirement that a personal representative bring a wrongful death action within two years raises in any way a federal question, nor is there any allegation that the state statute conflicts or is repugnant to the Constitution of the United States, or the treaties or laws of the United States. Therefore, under 28 U.S.C. Section 1257(3), the Petition for Writ of Certiorari is due to be denied.

As to this particular defendant, there were no issues presented to the trial court or the Alabama Supreme Court about the right to die or the termination of life support systems as alleged in plaintiff's petition. This Court needs to be aware that those issues were directed to the defendants who were granted dismissals due to sovereign immunity. The only issue as to this defendant was whether the plaintiff met the Alabama statutory requirement to file this

wrongful death action by a duly appointed personal representative within two years of the death. In fact, when the Alabama Supreme Court considered the appeal involving this defendant, it had already decided against this same plaintiff who had taken a separate appeal against separate medical doctors on the same principles of law. Johnny H. Waters, et al. v. Dr. Steven Hipp and Dr. Michael J. Rosner, 600 So. 2d 981 (Ala. 1992). The Alabama Supreme Court in affirming the trial court in this case affirmed its previous decisions which merely state that to satisfy the provisions of the wrongful death statute, a personal representative must file the action within two years of the date of death. Downtown Nursing Home, Inc. v. Pool, 375 So. 2d 465 (Ala. 1979), cert. denied, 445 U.S. 930 (1980). Interestingly, the Downtown Nursing Home, Inc. v. Pool case, *supra*, was another attempt by a prior plaintiff to seek certiorari on this very same issue, and this Honorable Court denied that attempt.

The sole issues presented to the trial court and the Alabama Supreme Court in this case involved whether a personal representative had been appointed within the two-year period to bring the case. Alabama has consistently held that the filing of an action by someone other than a duly appointed personal representative results in the attempted filing of suit being a nullity.

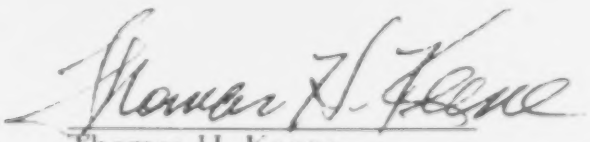
Downtown Nursing Home, Inc. v. Pool, *supra*, Waters v. Hipp and Rosner, *supra*. The personal representative must be the executor or administrator of the estate of the deceased pursuant to the cases cited above. In this case, the plaintiff never showed before the trial court that a personal representative had been appointed.

The trial court and the Supreme Court of Alabama in this particular case was faced with the argument by the plaintiff that the motion for summary judgment could not be considered because of plaintiff's contention that an answer must be first filed raising this defense. The second argument the plaintiff made was that in this case, the personal representative did not have to be the party bringing the suit. Both arguments were rejected by the trial court and the Alabama Supreme Court.

It is obvious that both of these issues involve interpretation of Alabama Rules of Civil Procedure and Alabama law. These issues have absolutely no relationship to the interpretation of the United States Constitution, its laws or treaties. Thus, this petition fails and is due to be denied. Webb v. Webb, 451 U.S. 493, 68 L.Ed 2d 392, 101 S.Ct. 1889 (1981).

CONCLUSION

Even giving the petitioner the benefit of the doubt in reading this very garbled Petition for Writ of Certiorari which combines two separate cases, the case against Dr. Reeves and the allegations made by the petitioner clearly fail to raise federal questions. No federal question was presented to the trial court in Alabama nor the Alabama Supreme Court as to these procedural and statutory questions of Alabama law. The petitioner is not now entitled to raise these questions before this Honorable Court. It is respectfully submitted that this petition is due to be denied.



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CERTIFICATE OF SERVICE

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